

STATE OF HAWAII
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

October 12, 2007

**Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

File No.: CC HA-06-03
Existing 180-Day Exp.: November 5, 2007
Proposed 180-Day Exp.: May 6, 2008

REGARDING: Request to Extend the Processing Period in Order to Process a Contested Case Hearing for Conservation District Use Application (CDUA) HA-3269 for the Cohen Single Family Residence (SFR)

APPLICANT: Jonathan Cohen,
c/o Randy Vitousek, Esq., Cades Schutte LLP,
75-170 Hualalai Road, Suite 303, Kailua Kona, HI 96740

LANDOWNER: Aloha Properties, LLC

LOCATION: Pao'o, North Kohala, Island of Hawai'i

TMK: (3) 5-7-001:005

AREA OF PARCEL: ≈10.61 acres

USE: ≈ 5,000 square feet (ft²)

SUBZONE: Resource

BACKGROUND:

On April 19, 2006, Roy A Vitousek, III, Esq., acting on behalf of applicant Jonathan Cohen, requested a Contested Case hearing to challenge the Office of Conservation and Coastal Land's recommendation to deny Mr. Cohen's Conservation District Use Application (CDUA) HA-3269 to construct a single family residence at the above mentioned parcel in Pao'o, North Kohala, Hawai'i.

Two other intervenors subsequently petitioned to be party to the case: *Maika'i Kamakani 'O Kohala, Inc.* and *Kamakani 'O Kohala Ohana*, dba *Kako'o*.

TIME EXTENSION REQUESTS:

On April 20, 2006, the OCCL notified Mr. Vitousek that the processing deadline for the application had been extended to August 7, 2006.

On July 14, 2006 the Board of Land and Natural Resources granted a second request to extend the processing deadline to November 5, 2006.

On July 24, 2006 a Hearing on Standing and a Pre-Hearing Conference were held in Kailua-Kona in Hawai'i County. Both intervenors were granted standing. The Evidentiary Hearing was set for Sept 20-23 in Hawi, Hawai'i County.

On September 5, 2006 OCCL received a request from Mr. Vitousek requesting a postponement of the hearing and an additional 180-day extension of the processing deadline. The Board granted the request, extending the processing deadline to May 4, 2007.

On February 14, 2007 OCCL received a request from Mr. Vitousek to extend the processing period an additional six months. The Board granted the request, extending the processing deadline to November 5, 2007.

On May 7, 2007 the Hearing Officer issued Minute Order 6 stating that, at the request of the Petitioner, the Contested Case Hearing was postponed to March 10-14, 2008. A pre-hearing teleconference call was scheduled for November 13, 2007.

On September 24, 2007 OCCL requested that Mr. Vitousek submit his request for an additional six-month extension [**Exhibit 1**]. On October 2, 2007 OCCL received a request from Mr. Vitousek to extend the processing period an additional six months [**Exhibit 2**].

AUTHORITY FOR GRANTING EXTENSIONS:

The authority for granting time extensions to the CDUA processing period is provided in Section 183C-6(b), HRS, which states that "...when a contested case hearing is required pursuant to Chapter 91, the one-hundred eighty days may be extended an additional ninety days at the request of the applicant. Any request for additional extensions shall be subject to the approval of the Board."

DISCUSSION:

Mr. Vitousek's request to extend the processing period an additional 180 days would make the new deadline May 6, 2008. Staff supports the applicant's request.

Staff, therefore, recommends as follows:

RECOMMENDATION:

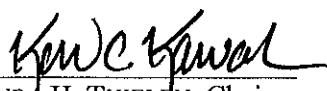
That the Board of Land and Natural Resources grant Mr. Vitousek's request to extend the processing period on CDUA HA-3269 180 days – bringing the deadline to May 6, 2008.

Respectfully submitted,

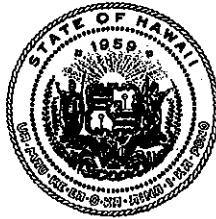


Michael Cain
Staff Planner

Approved for submittal:

for 
LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SEP 24 2007

Ref.: OCCL:MC

File: CC HA-06-03

Roy A. Vitousek III
Cades Schutte
75-170 Hualalai Road, Suite 303
Kailua Kona HI 96740

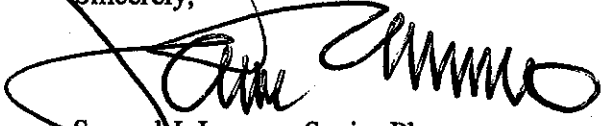
Dear Mr. Vitousek,

SUBJECT: Extension of Processing Period for Conservation District Use Application [CDUA] HA-3269
for a Single Family Residence at Pao'o, North Kohala, Hawaii, TMK (3) 5-7-001:005

The current expiration date for processing CDUA HA-3269 is November 5, 2007. According to the most recent Minute Order, the Contested Case Hearing was scheduled for March 10-14, 2008 at the request of the petitioner. OCCL requests that you submit a request for an additional extension of the processing period, which OCCL will then submit to the Board.

If you have questions regarding procedures, please contact Michael Cain at 587-0380.

Sincerely,


Samuel J. Lemmo, Senior Planner
Office of Conservation and Coastal Lands

cc: BLNR Chair
Linda Chow, Deputy Attorney General

EXHIBIT 1

cades schutte

October 2, 2007

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@cales.com

VIA EMAIL sam.j.lemmo@hawaii.gov
VIA FACSIMILE (808) 587-0322
VIA FIRST-CLASS MAIL

Samuel J. Lemmo, Senior Planner
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Conservation District Use Application HA-3269
DLNR File No.: CC HA-06-03; TMK: (3) 5-7-001:005
Applicant: Jonathan Cohen, Aloha Properties, LLC

Dear Mr. Lemmo:

The purpose of this letter is to request a six-month extension of the decision period with respect to the above-referenced conservation district use permit application. We understand the decision period was previously extended to November 5, 2007. The contested case hearing is currently set for the week of March 10, 2008. On behalf of the Applicant, we hereby request a six-month extension to May 5, 2008.

I was surprised and disappointed to receive your letter of October 1, 2007. I am enclosing a copy of an e-mail I received from Michael Cain of your office on September 26, 2007, advising me that "our deadline for submittals is next week." I prepared this request on October 1, 2007, and was sending it to you this morning when I received your letter. Your letter seems inconsistent with Mr. Cain's e-mail, which did not state any specific deadline to submit a request beyond "next week" and did not disclose that on October 1, 2007, you would place "the original staff recommendation" on the Board's agenda.

This matter has been referred by the Board to a contested case hearing. It is hard to understand how the Board could make a decision while the contested case hearing is pending without adversely impacting the due process rights of the parties.

Please submit the request for extension to the Board. The request was submitted well in advance of the November 5, 2007, deadline and within the time frame stated in Mr. Cain's e-mail.

EXHIBIT 2

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

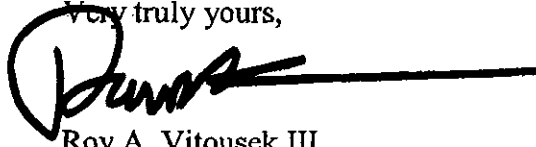
Kona Office
75-170 Hualalai Road, Suite 303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2007 OCT - 2 P 2: 50
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Samuel J. Lemmo, Senior Planner
October 2, 2007
Page 2

As always, if you have any questions or require additional information, please let me know.

Very truly yours,



Roy A. Vitousek III

for

CADES SCHUTTE

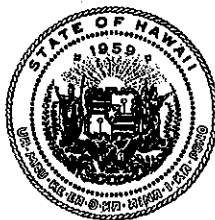
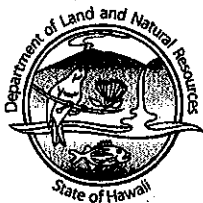
A Limited Liability Law Partnership

RAV:tmt
Enclosure

cc: Laura H. Thielen, BLNR Chair
Michael Cain, Staff Planner
Louis L.C. Chang, Hearing Officer
Linda L.W. Chow, Esq.
David Kimo Frankel, Esq.
Richard Schulze, Esq.
Jonathan Cohen

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LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
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BOARD OF LAND AND NATURAL RESOURCES
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Ref.:OCCL:MC

File: CC KA-08-01

OCT - 1 2007

Roy A. Vitousek III
Cades Schutte
75-170 Hualalai Road, Suite 303
Kailua Kona HI 96740

Dear Mr. Vitousek,

SUBJECT: Contested Case KA-08-01 regarding Conservation District Use Application [CDUA] KA-3399 for a Single Family Residence at Hā'ena, Hanalei, Kaua'i, TMK (4) 5-9-03:10, 45

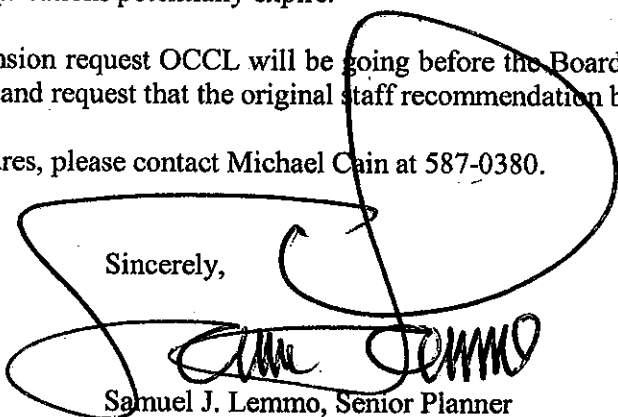
The current expiration date for processing CDUA KA-3399 is October 31, 2007. The Office of Conservation and Coastal Lands (OCCL) requested that you submit a request to extend the processing period for this application on September 18, 2007. We have yet to receive a response from your office, and have been unable to contact you via email or phone.

Applications that are not resolved by the expiration date are subject to automatic approval; thus the need for you to file an extension request. It is OCCL's practice to always schedule cases one Board meeting prior to the meeting when the permit applications potentially expire.

Because we have not received the extension request OCCL will be going before the Board of Land and Natural Resources on October 12, 2007 and request that the original staff recommendation be heard.

If you have questions regarding procedures, please contact Michael Cain at 587-0380.

Sincerely,


Samuel J. Lemmo, Senior Planner
Office of Conservation and Coastal Lands

cc: BLNR Chair
Gregory Mooers
Randy Ishikawa, Deputy Attorney General
Lou Chang, ALC

From: Stephen.M.Cain@hawaii.gov
Sent: Wednesday, September 26, 2007 3:43 PM
To: Randy Vitousek
Subject: Extensions to Processing Times on Contested Cases

Randy,

Welcome Back!

I'd like to bring the extension requests on HA-06-03 (Cohen SFR Paoo) and KA-08-01 (Morrow SFR Haena) to the next Board Meeting. Our deadline for submittals is next week. I'll call you tomorrow to check on the status of the requests.

**Thanks
Michael C.**

Michael Cain, Planner
Office of Conservation and Coastal Lands
Kalanimoku Building, Room 131
1151 Punchbowl Honolulu HI 96809
tel 808.587.0048 fax 808.587.0322

10/2/2007